

representations and should be accorded the authority to change the practice based on commercial burdens and customer complaints, should either materialize. If there are idiosyncratic actions where a carrier is alleged to be acting in an unreasonable manner, in light of both customer privacy expectations and reasonable commercial business practices, the Commission should resolve such claims on a case-by-case basis pursuant to its Section 208 authority.

D. Electronic Publishing Affiliations

1. Discrimination Issues

A number of commentators misapprehend the scope of this provision, e.g., one pertaining to a teaming or business arrangement in which a BOC is a participant,<sup>82</sup> arguing that it imposes a broad non-discrimination obligation as between a BOC-participant teaming or business arrangement and one in which there is no BOC participation.<sup>83</sup>

The statute does not address the latter teaming or business arrangement. Thus, it does not impose any "nondiscriminatory" obligation on the BOC with respect to non-BOC participant arrangements. Therefore, a BOC's sharing "basic telephone service information" with a teaming or business arrangement in which it is a participant<sup>84</sup> forms no basis for a BOC to have to share similar information with a teaming or business arrangement in which it is not a participant.<sup>85</sup>

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<sup>82</sup> U S WEST at 27; Bell Atlantic/NYNEX at A-7 - A-8.

<sup>83</sup> AT&T at 21, 22 (arguing that affirmative written consent was required with respect to any arrangement to which a BOC was a party, consistent with AT&T's notion that a BOC's affiliates are "third parties"); Cox at 12, 15, 17.

<sup>84</sup> In this context, the teaming or business arrangement should benefit from its BOC affiliation and be able to access and use CPNI, within the context of the arrangement itself, pursuant to a notification and opt-out process. U S WEST at 27; Bell Atlantic/NYNEX at A-7 - A-8, A-10; BellSouth at 27-28.

<sup>85</sup> Of course, to the extent that non-BOC participating teaming or business arrangement has the independent requisite customer approval to have access to CPNI, then CPNI would be provided to it. U S WEST at 31; Bell Atlantic/NYNEX at A-8.

Nor does Section 274 address the manner in which customer "approval" must be secured as between "an unaffiliated or affiliated entity."<sup>86</sup> The Section is silent on that matter.

Similarly, an electronic joint venture is a BOC affiliate and should be treated as such with respect to CPNI access and use. It is not a "third party," as asserted by some.<sup>87</sup>

## 2. Section 222 Issues

Directory Dividends has an incorrect notion of the provisions of Section 222 as those provisions are applied to the type of information it is addressing. While Directory Dividends claims that the information it seeks (and sought from Bell Atlantic) is "aggregate CPNI,"<sup>88</sup> it is incorrect. As Bell Atlantic advised Directory Dividends in its February, 1997 correspondence, a list of customer names and addresses does not meet the definition of "aggregate CPNI."<sup>89</sup> Thus, it is not subject to the mandatory release requirements associated with LECs who create and use such information.<sup>90</sup>

The information that Directory Dividends is addressing is either Subscriber List Information ("SLI")<sup>91</sup> or directory delivery information (that latter not being specifically addressed by the Act). Certainly, a BOC (like any other LEC) must provide SLI to those who are engaged in publishing directories. However, such information would not include information associated with nonpublished and nonlisted subscribers. As to these customers, there is no SLI. So long as a BOC has customer approval to share such information with its affiliate (an approval that need not be in writing, contrary to Directory Dividends' assertion),<sup>92</sup> there would be no Section 272(c)(1) violation.

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<sup>86</sup> Cox at 14-15.

<sup>87</sup> Id. at 13.

<sup>88</sup> Directory Dividends at 4.

<sup>89</sup> 47 USC Section 222(f)(2).

<sup>90</sup> Id. at 222(c)(3).

<sup>91</sup> Id. at 222(f)(3).

<sup>92</sup> Id.

To the extent that Directory Dividends is addressing the matter of providing directory publishers with "directory delivery information," U S WEST does include the names and addresses of nonpublished and nonlisted subscribers to directory publishers for the sole purpose of directory delivery. It is U S WEST's practice to allow third party publishers to include "ride along" advertising with the delivery of the directory.

#### IV. CONCLUSION

For all of the above reasons, the Commission should reject the arguments of those commentators contending that BOCs should not be able to share CPNI with their Sections 272 (in particular) and 274 affiliates unless the BOC secures the approval to do so through some type of third-party approval process. Neither the express language of Sections 272 and 274 require such a result; and the clear language and policy of Section 222 is that comparable approval processes will be established as among "all telecommunications carriers." Those approval processes must reflect differing customer expectations with respect to businesses which they patronize and those with whom there is no relationship.

In addition to the statutory language of the sections under discussion, and their structural differences, as a matter of policy the Commission should reject the anti-BOC CPNI sharing arguments. Those arguments, while proffered almost apologetically as being compelled by Congressional intent, are really nothing more than individual competitor protectionist arguments. They are advanced with no consideration of the overall benefit to competition or consumer welfare and their adoption would, in fact, do harm to both. Rather, the Commission should reinforce its own policy position that information sharing, and the efficiencies associated with such sharing, are manifestly in the public interest. In light of that

policy, and in the absence of any clear Congressional mandate to the contrary, such sharing should be permitted subsequent to the securing of appropriate "customer approval."

Respectfully submitted,

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## Attachment A

AT&T claims that customer name, address and phone number is not CPNI.<sup>1</sup> While such was correct based on an explicit exemption to the Commission's CPNI rules, such is not so clear under the CPNI provisions of the 1996 Act.<sup>2</sup> Indeed, because of this, at least one party to this proceeding (Sprint) has requested that the Commission "clarify" that such information is excluded.<sup>3</sup>

Apparently of something of the same mind as AT&T, MCI asserts that "universe list" data does not constitute CPNI "but is the type of information that is useful both for marketing and for the provision of service, such as local billing name and address, billing telephone number, an indication of whether or not the number is non-published or non-listed."<sup>4</sup> MCI objects to the fact that Southern New England Telephone Company has refused (apparently) to provide such information to MCI and that U S WEST recently withdrew its offering containing such information.<sup>5</sup>

U S WEST did, in fact, withdraw our Carrier Universe List ("CUL") offering.<sup>6</sup> The action was taken in order to comply with the Commission's Billing Name and Address Orders. The issuance of the Commission's Third Order on Reconsideration, which for the second time rejected arguments that BNA should be able to be used for interexchange carrier marketing,<sup>7</sup> in conjunction with the provisions of the

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<sup>1</sup> AT&T Comments at 15 n.16.

<sup>2</sup> One could read the statutory provision associated with Subscriber List Information ("SLI") to exempt customer's listed name, address and telephone number from the definition of CPNI itself. Or, one could argue that the information is CPNI but is permitted to be provided for a specific purpose, i.e., the publication of directories.

<sup>3</sup> Sprint Comments, filed June 11 1996, CC Docket No. 96-115 at 8.

<sup>4</sup> MCI at 2.

<sup>5</sup> Id. at 3.

<sup>6</sup> That list, as U S WEST described it to the Commission previously during the Billing Name and Address proceeding (see, e.g., In the Matter of Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91-115, Supplemental Comments of U S WEST Communications, Inc., filed June 10, 1992, at 8, 19; and U S WEST Communications, Inc., Petition for Expedited Reconsideration and Petition for Clarification, filed Aug. 5, 1993, at 20-21). The offering, which had its genesis in presubscription lists, had two components, compiled totally from BNA information. The first component provided carriers with the BNA of all customers presubscribed to them or who had used their services as "casual users." The second component was a list of all customers not presubscribed to the requesting carrier.

<sup>7</sup> In the Commission's Second Order on Reconsideration, the Commission addressed an argument that bulk BNA (i.e., a carrier's subscriber list constituted under a BNA protocol) should be available to market interexchange carrier services. 8 FCC Rcd. 8798, 8805 ¶ 37 (1993). The argument was made by MCI on the theory that such marketing helped "many IXCs compete against an entrenched IXC." Id. at 8804 ¶ 33. The FCC rejected MCI's argument on the grounds that adoption of MCI's argument would "redefine BNA so that the privacy protections [of the Commission's rules would be] applicable only to BNA associated with calling card, collect, and third party calls." Id. at 8805 ¶ 37.

1996 Act regarding CPNI,<sup>8</sup> caused U S WEST to cease providing CUL because of lack of affirmative customer approval to provide the information to third parties.

It was widely known by U S WEST personnel that, prior to the Commission's BNA First Report and Order,<sup>9</sup> portions of the CUL (indeed, the most widely demanded component) were used for marketing purposes. Indeed, U S WEST advised the Commission of this fact in our filed comments. After the issuance of the Commission's BNA First Report and Order, U S WEST permitted carriers (such as MCI) to continue to receive the CUL, pending resolution of reconsideration petitions, on the condition that the CUL be used in conformity with the requirements of the Commission's BNA Orders and rules.

Upon the issuance of the Commission's Third Order on Reconsideration, and the enactment of the 1996 Act, U S WEST determined that it would no longer provide CUL in the format it had done previously (in bulk) or with the compliance obligation being delegated to a carrier "representation" of conformity with the Commission's rules. While U S WEST has not precluded the possibility of providing specific BNA information in those instances where the BNA will be used for an appropriate purpose -- either under the FCC's BNA Rules (specifically 64.1201(c)(1)) or the 1996 Act (specifically Section 222(d)) -- we note that neither provision requires that BNA (or CPNI) be provided by a carrier for such purpose. We also advise that should we provide BNA information for approved purposes in the future, because of the clear past practice of carriers using U S WEST's bulk BNA for marketing purposes, we would be reluctant to provide the BNA information "in bulk" unless a carrier could demonstrate (with factual descriptions and examples) how the bulk BNA would be useful in support of an approved purpose and used only for that purpose.<sup>10</sup>

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In its Third Order on Reconsideration, 11 FCC Rcd. 6835 (1996), the FCC again rejected arguments that bulk BNA should be available to carriers unaffiliated with the customer for marketing. It specifically rejected an argument by Oncor that presubscription-type lists (which were constituted by BNA) should remain available for "ongoing marketing by IXCs to persuade those end users to presubscribe to a particular IXC," holding that allowing such use would create a "loophole that would eviscerate the rest of the privacy protections" it had established in its BNA Orders. Id. at 6853 ¶¶ 29-30. The Commission stated that "unless carriers are precluded from disclosing BNA for marketing purposes, telephone subscribers could be contacted by a multitude of telemarketers with whom they have no established business relationship." Id. at 6850-51 ¶ 25.

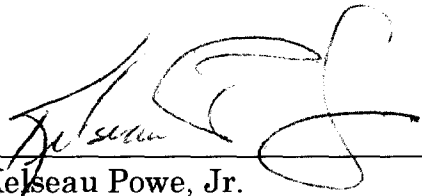
<sup>8</sup> The fact that the CPNI definition in the 1996 Act (Section 222(f)(1)) contains no exception for name, address and telephone information, and that -- even if it did -- the exception would probably be confined only to SLI (thereby rendering BNA to be CPNI), caused U S WEST to believe a more conservative approach to the provision of CUL was warranted than had been previously permitted.

<sup>9</sup> 7 FCC Rcd. 3528 (1992).

<sup>10</sup> For example, a carrier might well need "bulk BNA" of its customers for billing, customer service, etc. However, the Commission has already permitted the provision of bulk BNA for such purpose. It is doubtful whether a similar case of need for "bulk BNA" could be made with respect to a generally stated "fraud prevention" purpose or a general "provisioning" purpose. This is particularly true since, under the Commission's Interconnection Order (FCC 96-325 (1996)), carriers will have access via ILEC's Operational Support Systems to the necessary information on a "per query" basis.

## CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 27<sup>th</sup> day of March, 1997, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST, INC.** to be served via first-class U.S. mail, postage prepaid, upon the persons listed on the attached service list.

  
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